our Code says that 'process to commence a suit shall be a writ,' applying to both chancery and actions at law." The same language quoted by the court, is used in the Virginia statute. Virginia Code, sec. 3223.

On a question whether an action on a policy of insurance was barred by the limitation therein prescribed, it was held in *Va. Fire & Marine Ins. Co.* v. *Vaughan*, 88 Va. 832, 835, that the action was commenced on the day of the issuance of the writ. In *Noell* v. *Noell*, 93 Va. 433, 438 (in which the action was at law), Judge Cardwell quotes with approval from the opinion in *Burdock* v. *Green*, 18 Johns. 14, as follows: "The issuing of the writ is the commencement of the suit, in all cases where time is material, so as to save the statute of limitations." Such seems to be the rule generally prevailing in the American courts, so far as the parties to the suit are concerned, without distinction between proceedings at law and those in chancery: *Ross* v. *Luther*, 4 Cow. (N. Y.) 158, reported with an excellent note in 15 Am. Dec. 341. In this note the editor says: "The rule in chancery under the ancient practice was that a suit was deemed commenced as between the parties and their privies from the time of the issuance of the *subpœna* and its service, or a *bona fide* attempt to serve it; but the suit was not deemed pending so as to constitute notice to strangers until the subpœna was actually served."

In a monographic note to *Newman* v. *Chapman* (2 Rand. 93) in 14 A . Dec. 766, 776, the doctrine is said to be that so far as concerns *pendente lite* purchasers, without actual notice, a suit in chancery is not deemed pending until the service of process.

The modern rule would therefore seem to be, that as between the parties to the proceeding, whether at law or in chancery, the issuing of the writ is the commencement of the proceeding. But as to strangers—*e. g.*, *pendente lite* purchasers—without actual notice, the pendency of the proceeding dates from the service of the writ.

PLEADING—ADMINISTRATORS—NE UNQUES EXECUTOR.—Plaintiff as administrator of his intestate brought his action in *assumpsit* against the defendant, who pleaded *non assumpsit*. No proof was offered by plaintiff of his qualification as administrator. *Held*, that by pleading to the merits, defendant admitted the character in which the plaintiff sued—and that if defendant proposes to require proof of the qualification, he must do so by a special plea of *ne unques executor* (or *administrator*)—*McDonald* v. *Coles* (W. Va.), 32 S. E. 1033.

On this point the court said: "The defence makes the point that, under the plea of *non assumpsit*, it rested on the plaintiff to prove that he had been legally appointed administrator. This position cannot be sustained. There is a plea distinctively called, in the books on common-law pleading, a plea of '*ne unques executor*' (or '*administrator*'),—'never executor.' It must be used where it is intended to deny the right of the person to sue as executor or administrator, else his capacity to sue as such is admitted. 1 Chit. Pl. 517; 2 Lomax, Ex'rs, 380. The cases of *Brown* v. *Nourse*, 55 Me. 230; *Langdon* v. *Potter*, 11 Mass, 313; *Champlin* v. *Tilley*, 3 Day, 303; and *Collins* v. *Ayers*, 13 Ill. 358, show, on common-law authority, that, where an executor or administrator sues, there must be the plea of *ne unques*, else no proof of appointment is required. Generally, where one sues in a representative capacity, it need not be proven, unless there is a plea denying it. *Chicago Legal News Co.* v. *Browne*, 103 Ill. 317. Where there is a plea of general

issue, or other plea to the merits, it admits the capacity of the plaintiff to sue. *Alderman* v. *Finley*, 52 Am. Dec. 244; *Pullman* v. *Upton*, 96 U. S. 328; 1 Bart. Law Prac. 501; *Bank* v. *Curtis*, 36 Am. Dec. 492. So it is where a corporation sues. Our statute was only necessary to require an oath to a plea denying incorporation. I regard the above-named plea as one in abatement, as it goes to the disability of the person suing or sued. But the Massachusetts case says it may be pleaded in bar or abatement."

In *Noonan* v. *Bradley*, 9 Wall. 394, it was held that the defense of *ne unques executor* might be pleaded in bar of the action. The general subject is discussed at some length in *Lusk* v. *Kimball* (U. S. Circ. Ct. App.), 4 Va. Law Reg. 731. See also 4 Va. Law Reg. 331.

LARCENY—PROPERTY SUBJECT TO—JUDICIAL DISCOURSE ON DOGS.—In *State* v. *Langford*, 33 S. E. 370, the Supreme Court of Sourth Carolina holds that where dogs are by law taxable, they *ipso facto* become the subjects of larceny like other personal chattels. Jones, J., in delivering the opinion of the court, records his conceptions of the noble animal in the following strain:

"Neither is it just to say of the dog that its nature is so base as to render it unworthy of protection as absolute property, for Baron Cuvier says the dog is the 'completest, the most singular, and the most useful conquest ever made by man.' When we are told that the Greeks and Romans employed dogs in war, armed with spiked collars, and that Corinth was saved by war dogs, which attacked and checked the enemy until the sleeping garrison were aroused, we better understand Shakespeare's Antony when he said, 'Cry havoc, and let slip the dogs of war.' We should not let contempt for sheep-killing dogs and our dread of hydrophobia do injustice to the noble Newfoundland, that braves the water to rescue the drowning child; to the Esquimaux dog, the burden-bearer of the Artic regions; to the sheep dog, that guards the shepherd's flocks, and makes sheep raising possible in some countries; to the St. Bernard dog, trained to rescue travelers lost or buried in the snows of the Alps; to the swift and docile greyhound; to the package-carrying spaniel; to the sagacious setters and pointers, through whose eager aid tables are supplied with the game of the season; to the fleet fox hound, whose music, when opening on the fleeing fox, is sweet to many ears; to the faithful watch dog, whose honest bark, as Byron says, bays 'deep-mouthed welcome as we draw near home;' to the rat-exterminating terrier; to the wakeful fice, which the burglar dreads more than he does the sleeping master; to even the pug, whose very ugliness inspires the adoration of the mistress; to the brag 'possum dog and 'coon dog, for which the owner will fight if imposed upon; and, lastly, to the pet dog and playmate of the American boy, to say nothing of the 'yaller dog,' that defies legislatures. Of all animals, the dog is most domestic. Its intelligence, docility, and devotion make it the servant, the companion, and the faithful friend of man. The raising and training of dogs is now pursued by many as a business, large sums of money are invested in them, and they are bought and sold as other property. In this State, by statute, dogs are and have been taxed as personal property, according to value, and for revenue. As stated in *Salley* v. *Railroad Co.*, 54 S. C. 484, 32 S. E. 527: 'What the law taxes as personal property it will protect as such.'"